SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1845—No. 123.

THE UNITED STATES, PLAINTIFFS,

vs.

THE INHABITANTS OF THE CITY OF PORTLAND.

CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF THE U. S. FOR MAINE.

Circuit court of the United States,
Maine district, May term, 1845:

The UNITED STATES
vs.
The INHABITANTS of the city of Portland.

This is an action brought by the United States to recover certain moneys, as by the schedule hereunto annexed, marked A.

A copy of the writ is also annexed, marked B. The moneys in the schedule specified, were paid by the United States for taxes assessed by the city of Portland upon the land, wharf, and building owned by the United States, situated in said city of Portland. The building upon said land, and wharf, was erected by the United States for a custom-house within and for the collection district of Portland and Falmouth, and has always been occupied and used for that purpose, and no other.

It is admitted by the plaintiffs, that the assessment of taxes by the city of Portland for the years enumerated in said schedule A, were made in conformity to the laws of Maine, and were legal, excepting in so far as said custom-house, wharf, and land are concerned.

It is admitted by defendants, that tax bills, including the taxes enumerated in said schedule A, with warrants, in form prescribed by law, were committed to the collector of Portland, for the years named in said schedule A, for collection.

The tax for the year 1842 was paid by the collector of the said district of Portland and Falmouth, under protest, by direction of the Treasury Department. A copy of said protest is annexed, marked C. The residue of said taxes was paid without protest, or objection to the assessment or payment of the same; but none of said taxes were paid until after warrants for the collection thereof had been committed to the collector, as before stated; and no assent was given to such assessment,

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other than such as might be inferred from the fact of payment under the circumstances before stated.

The land on which said building stands, and the wharf connected therewith, are within the legislative jurisdiction of the State of Maine, and have always been so, not having been purchased by the United States with the consent of the legislature of the State within which the same are situated.

The taxes specified in said schedule A, for the years 1836, 1837, 1838, 1839, were assessed for county and city purposes. The residue of taxes specified in said schedule were assessed for State, county, and city purposes. All said taxes were assessed under the laws of Maine, and legally assessed, if said property was liable to taxation. The taxes for the years 1832, 1833, 1834, 1835, 1836, 1837, as specified in said schedule, were paid more than six years before the commencement of this action.

All questions of law that might or may arise on the foregoing statement of facts, are reserved to both parties, as fully as if specially taken in pleading.

The plaintiffs are to become nonsuit, or the defendants to be defaulted, on the above statement, according as the court shall direct, with reference to the legal rights of the parties.

AUGUSTINE HAINES,
U. S. Dist. Att'y for Maine district.
W. P. FESSENDEN,
City Solicitor.

A.

Taxes paid on the custom-house building, land, and wharf.

For the year 1832		83 20
" 1833		78 40
" 1834		83 20
" 1835		81 60
" 1836		75 20
" 1837		67 20
" 1838		70 40
" 1839		83 20
" 1840		94 40
" 1841		88 00
" 1842	73 50	
Expenses advertising, and interest	29 39	
		102 89
		$907 69
Interest on the above—		

B.

The President of the United States of America.

First circuit of the United States, district of Maine, ss:

[L. S.] To the marshal of our district of Maine, or his deputy, greeting:

We command you to attach the goods or estate of the inhabitants of the city of Portland, in our said district, to the value of two thousand dollars, and summon said inhabitants to appear before our circuit court next to be holden at Portland, within and for our district of Maine, on the first day of May next, then and there, in our said court, to answer unto the United States of America in a plea of the case, for that the said inhabitants, on the day of the purchase of this writ at Portland aforesaid, were justly indebted to the plaintiffs in the full sum of fifteen hundred dollars, for so much money there before that time had and received; and being so indebted, the said inhabitants, then and in consideration thereof, assumed on themselves and promised the plaintiffs to pay the same sum on demand. Yet, though requested, said inhabitants, or either of them, have not paid said sum, to the damage of the said plaintiffs, as they say, the sum of two thousand dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein.

Witness the honorable Roger B. Taney, at Portland, the ninth day of February, in the year of our Lord one thousand eight hundred and forty-four.

J. MUSSEY, *Clerk.*

Maine district, ss:

March 30, 1844.

In obedience to this precept, I have this day attached one quill, of the value of one cent, as the property of the within named inhabitants, and at the same time I delivered true and attested copies of this writ—one copy to Amos Nichols, clerk, and one copy to Eliphalet Greeley, mayor of the said city of Portland.

JOHN D. KINSMAN,
U. S. Marshal.

C.

COLLECTOR'S OFFICE,
District of Portland and Falmouth,
Portland, January 22d, 1844.

Whereas the authorities of the city of Portland have assessed a tax of seventy-three dollars and fifty cents on the property of the United States situated in said Portland, and used for a custom-house, for the year one thousand eight hundred and forty-two, and have advertised the same in a public newspaper printed in said Portland, and demanded payment of the same tax of the collector of the customs of the United States for the district of Portland and Falmouth—and the said collector believing

the said tax illegal, and by law not recoverable, and that the said custom-house, and lot on which it stands, is not by law liable to be assessed for any State, county, or city tax, it being wholly and solely used and improved by the public officers of the United States for the transaction of the public business of the United States, and for no other purposes—protesting against the legality of said tax, and protesting against the right of the said city authorities to collect said tax of the United States, the United States, by John Anderson, collector of the customs for the district of Portland and Falmouth aforesaid, pays the same to the treasurer and collector of taxes of said city of Portland, together with the interest, costs, and charges thereon, amounting, in the whole, to the sum of one hundred and two dollars and eighty-nine cents, with the expressed intention to reclaim the same sum in an action at law, to the end that the question, whether said property is or is not liable for and subject to said tax, may be decided by the honorable courts of law of the United States.

Signed, JOHN ANDERSON,
Collector of the customs for the district of Portland and Falmouth.

PORTLAND, *January 22d*, 1844.

Received a triplicate of the foregoing.
Signed, ELIPHALET GREELEY, *Mayor.*
WILLIAM LORD, *Treasurer.*

United States, Maine district, ss:

At a circuit court of the United States for the first circuit, begun and holden at Portland, within and for Maine district, on Thursday, the first day of May, in the year of our Lord one thousand eight hundred and forty-five:

Present, the honorable Joseph Story, associate justice of the Supreme Court, and the honorable Ashur Ware, district judge.

The UNITED STATES OF AMERICA,
vs.
The INHABITANTS of the city of Portland.

This cause came up for hearing, upon a statement of facts agreed by the parties, whereupon the following questions occurred:

1st. Whether the custom-house building, land, and wharf owned and occupied by the United States, in the manner specified in said statement, were legally liable to taxation?

2d. Whether, if said custom-house building, land, and wharf were not thus liable, the plaintiffs are entitled to recover, in this action, from the defendants, the whole amount of moneys paid by the plaintiffs as taxes, as appears by the schedule A, annexed to said statement.

3d. Whether the plaintiffs are entitled to recover, in this action, from the defendants, any portion, and what portion, of the moneys by the plaintiffs paid as taxes, as aforesaid.

4th. Whether, if said property was not liable to taxation, and the plaintiffs would otherwise have a right to recover back the moneys so paid, any part of said claim is barred by the operation of the statutes of the State of Maine, for the limitation of personal actions.

Upon which questions the judges of the said circuit court were opposed in opinion; and thereupon, upon the motion of the district attorney, for and on behalf of the United States, it was ordered by the court, that the said questions, upon which the said judges were so opposed, should be certified, under the seal of the court, to the Supreme Court of the United States at their next session, for a final decision.

Signed, JOSEPH STORY, *Ass't Justice of the Supreme Court of the U. States.*
ASHUR WARE, *District Judge of the United States for the district of Maine.*

United States of America, Maine district, ss:

I, John Mussey, clerk of the circuit court of the United States for the first circuit for Maine district, do hereby certify to the honorable the justices of the Supreme Court of said States, the foregoing questions, with the statement of facts accompanying the same, agreeably to the order of the judges of said circuit court, passed at May term of said court, in the year of our Lord one thousand eight hundred and forty-five.

In testimony whereof, I have hereto set my hand and affixed the [L. S.] seal of said circuit court, at Portland, this first day of November, in the year of our Lord one thousand eight hundred and forty-five.

JOHN MUSSEY.

Filed 13 Nov., 1845.